

## **NOTICE OF PROPOSED SETTLEMENT**

### **PLEASE TAKE NOTICE:**

**TO ALL CHILDREN WHO ARE OR WILL BE IN THE CUSTODY OF MISSISSIPPI'S DEPARTMENT OF HUMAN SERVICES' (DHS') DIVISION OF FAMILY AND CHILDREN'S SERVICES ("DFCS"):**

#### **I. Background of the Case**

This notice concerns a proposed settlement of the lawsuit known as *Olivia Y., et al. v. Barbour*. **If you are one of the children described above, or if you are the legal representative of one or more of these children, then you should read this notice.**

*Olivia Y.* was filed in March 2004 in the United States District Court for the Southern District of Mississippi, Jackson Division, against the Governor of Mississippi, the Executive Director of the Department of Human Services, and the Director of DHS's Division of Family and Children's Services, all in their official capacities (together they are called the "Defendants"). This case alleged that Mississippi's foster care system was failing to adequately protect children in its custody and provide necessary services in violation of their federal constitutional rights. This lawsuit sought only court-ordered changes in the system; money damages were never at issue.

Plaintiffs and Defendants have negotiated a proposed settlement as to liability and have asked the federal district judge assigned to the case to approve this settlement. The terms of this settlement agreement are described below. **You have the right to review the entire settlement agreement if you choose. You also have the right to tell the judge what you think before the judge decides whether to approve the settlement.**

#### **II. Notice of Hearing**

**PLEASE NOTE THAT THERE WILL BE A HEARING BEFORE UNITED STATES SENIOR DISTRICT JUDGE LEE ON THURSDAY, MAY 17, 2007, AT 9:30 A.M., AT THE JAMES O. EASTLAND UNITED STATES COURTHOUSE, 245 EAST CAPITOL STREET, JACKSON, MISSISSIPPI, IN COURTROOM 2, TO CONSIDER WHETHER THIS SETTLEMENT SHOULD BE APPROVED, AS PROVIDED BY RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE.**

**YOU ARE WELCOME TO ATTEND THE HEARING TO PRESENT ANY FAVORABLE COMMENTS OR OBJECTIONS REGARDING THE SETTLEMENT TO THE JUDGE. YOU ARE NOT, HOWEVER, REQUIRED TO ATTEND THE HEARING OR CONVEY ANY COMMENTS TO THE COURT.**

**PLEASE ALSO NOTE THAT THIS CASE AND THIS HEARING DO NOT CONCERN ANY INDIVIDUAL CHILD'S CASE, OR ANY CASE INVOLVING THE PARENTS OF CHILDREN IN DHS CUSTODY. THIS CASE AND THE MAY 17, 2007 HEARING CONCERN ONLY THE MISSISSIPPI FOSTER CARE SYSTEM AS A WHOLE.**

**III. How to Obtain Copies of the *Olivia Y.* Settlement Agreement or More Information About the Case**

If you would like a copy of the settlement agreement, it is available on the Mississippi DHS website at [www.mdhs.state.ms.us](http://www.mdhs.state.ms.us). If you do not own a computer, you can access one at many local libraries. If a computer is not available, a copy of the settlement agreement may be obtained by contacting Plaintiffs' counsel, Children's Rights, toll-free at (888) 283-2210 or Kate McMillan at DHS at (601) 359-4500.

Any class member or legal representative of a class member who has questions about the settlement agreement or would like more information about the lawsuit may contact attorneys Eric Thompson or Shirim Nothenberg. These attorneys work for Children's Rights and represent the Plaintiff Class. They can be reached toll-free at (888) 283-2210.

You may also review the materials that have been filed with the Court in this case, except those filed under seal, by going to the Office of the Clerk of the United States District Court for the Southern District of Mississippi (Jackson Division) at the James O. Eastland United States Courthouse, 245 Capitol Street, Jackson, Mississippi. The Clerk's Office is open on business days from 9:00 a.m. to 4:00 p.m. To review materials in the public record in the *Olivia Y.* case, refer to Civil Action Number 3:04CV251.

**IV. How to Submit Objections or Comments to the Court, or Request the Opportunity to Speak at the Hearing**

If you would like to submit any written objections or comments regarding the proposed *Olivia Y.* settlement, you must send a letter to the Clerk of Court at the following address:

Mr. J.T. Noblin, Clerk  
United States District Court for the  
Southern District of Mississippi  
United States Courthouse  
245 East Capitol Street  
Jackson, Mississippi 39201

In order to be considered by the Court, your letter must be received by no later than 4:00 p.m. on Monday, May 7, 2007. You must sign your letter, and must also print your name, address, and telephone number on the letter.

Please also send copies of your letter to the following lawyers:

Eric Thompson  
Children's Rights  
330 Seventh Ave., 4<sup>th</sup> Floor  
New York, New York 10001

Rusty Fortenberry  
Baker, Donelson, Bearman, Caldwell  
& Berkowitz, PC  
4268 I-55 North  
Meadowbrook Office Park  
Jackson, Mississippi 39211

If, in addition to writing your concerns to the Court, you would also like to speak at the hearing, please add this request to your letter and briefly describe what you want to speak about.

**V. The *Olivia Y.* Settlement**

This settlement, if approved by the Court, will resolve the liability phase of this litigation without a trial based on Defendants' agreement not to contest that the constitutional rights of Plaintiffs and the Plaintiff class were violated. Accordingly, the parties agree to move directly to the remedial phase of the litigation. The settlement contemplates that the parties will first attempt to agree on a remedial plan developed by Defendants and the national Council on Accreditation with consultation from the parties' experts. The plan must set forth specific actions and timelines necessary for the Defendants to achieve accreditation, bring the state into substantial conformity with federal standards regarding foster care, and address Plaintiffs' constitutional concerns. If agreement on the remedial plan is reached by the parties, it will become court enforceable, with an outside monitor, and resolve the litigation. If the parties cannot agree on a remedial plan, the parties will proceed to a trial as to the scope of the necessary remedy.

Claims such as those brought in this lawsuit may entitle a party, under certain circumstances, to apply to the Court for its reasonable attorneys' fees and costs. Any such application for reimbursement of fees and expenses to Class Counsel will be reviewed and determined by the Court in accordance with the requirements of Federal Rule of Civil Procedure 23(h). This settlement does not affect any person's individual cause(s) of action.

**This Notice Has Been Approved For Distribution By:**

/s/ Tom S. Lee

The Honorable Tom S. Lee  
Senior Judge  
United States District Court  
Southern District of Mississippi

Dated: April 10, 2007

